

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**
3 **SOUTHERN DIVISION**

4
5
6 **ALLEN DOUGLAS HALE, III,**
7 **Plaintiff,**

8 **VERSUS** **CIVIL ACTION NO: 1:16-cv-113-LG-RHW**

9
10 **CITY OF BILOXI, MISSISSIPPI;**
11 **KENNETH GARNER, Individually;**
12 **DARREN LEA, Individually; and**
13 **JOHN AND JANE DOES 2-10,**
14 **Individually,**
15 **Defendants.**

16
17 **DEPOSITION OF KENNETH GARNER**

18 Taken at the Law Office of Russell S. Gill,
19 638 Howard Avenue, Biloxi, Mississippi, on
20 Tuesday, October 25, 2016, beginning at
21 1:44 p.m.

1 Q. What kind of criminal history did you
2 find out that he had?

3 A. They were unable to really tell me
4 anything because it was not their case. The case
5 investigator was not there. It was locked away in
6 his office, and all they had was what little bit
7 of stuff we had in our Record Management System.

8 Q. And what was in the Record Management
9 System?

10 A. The warrant for credit card fraud; and
11 he had a picture from some incident before that,
12 and I don't recall what that was.

13 Q. Do you remember the names of the two
14 officers or the officer that you spoke with or the
15 investigator on that?

16 A. Yeah, it was Investigator Steve
17 Schlicht.

18 Q. Do you know how to spell Schlicht?

19 A. I don't really know. He has since
20 retired.

21 Q. Okay. Did you have any information
22 available that Doug might have a history of
23 violence?

24 A. Again, like I said, all they had was a
25 little bit of information in record management;

1 and I don't recall them saying anything about any
2 prior violent offense.

3 Q. Do you have the ability to run an NCIC
4 report on somebody?

5 A. You talking about a criminal history?

6 Q. Yes.

7 A. We do. We do have that.

8 Q. Did you run a criminal history check on
9 him?

10 A. I did not.

11 Q. Now, tell me about prior to your arrival
12 at the Mazalea RV Park where the incident
13 occurred. In your own words, tell me what
14 happened when you were first contacted or informed
15 about his arrest warrant.

16 A. I was at the police department doing
17 something with reports or computers or something.
18 Dispatch called me and said that a person that
19 lived at Mazalea RV had called and said that he
20 was there and that he had a warrant, and they told
21 me that they had verified he had an active felony
22 credit card warrant.

23 Q. And why did they contact you about that?

24 A. I was one of the supervisors that were
25 working. Basically, they called the desk phone,

1 and I happened to be sitting at the desk.

2 Q. Okay. What was your next step after
3 that?

4 A. I made sure, you know, verified and
5 confirmed the warrant, and I told them to send
6 three officers up there when one became available.

7 Q. Were any officers available?

8 A. We were a little bit busy at the time,
9 so it was a minute before anybody was available.

10 Q. Okay. And who ultimately became
11 available?

12 A. After I finished what I was doing, I
13 decided to go up to the RV park; and ultimately it
14 ended up being me and Darren Lea, another patrol
15 sergeant, and Robert McKeithen, who is a patrol
16 officer.

17 Q. Did you speak with either Darren Lea or
18 Robert McKeithen on the phone or on the radio
19 prior to meeting with them in person?

20 A. Yeah, we met at Southern Tire Mart,
21 which is just right there by the trailer park.

22 Q. How far away from the trailer park was
23 that?

24 A. I'm pretty sure the property butts up to
25 each other.

1 Q. What crime was Doug accused of in the
2 arrest warrant?

3 A. Credit card fraud.

4 Q. Would you classify that as a violent
5 crime?

6 A. I would not.

7 Q. Are you a K-9 officer currently?

8 A. Yes, I currently have a dog, yes.

9 Q. Were you a K-9 officer on April 1st,
10 2015?

11 A. I was not.

12 Q. So obviously you did not have a K-9 with
13 you?

14 A. I did not.

15 Q. Was Darren Lea a K-9 officer on
16 April 1st, 2015?

17 A. He was.

18 Q. Did he have his K-9 with him?

19 A. I believe so. It would be very unusual
20 for him to be at work and not have his dog.

21 Q. Did he use his dog during the service of
22 this arrest warrant?

23 A. No, he did not.

24 Q. Why didn't he use the dog during the
25 service of the arrest warrant?

1 MR. GILL: If you know.

2 THE WITNESS: I'm sorry?

3 MR. GILL: If you know.

4 THE WITNESS: I don't know what his
5 particular reason was, but I could tell you
6 what my reasoning would have been for not
7 using it as a K-9 handler.

8 BY MR. SMITH:

9 Q. Sure.

10 A. For one thing, like you said, it was a
11 nonviolent crime. The other is the small RV that
12 he was in. You know, a police dog is incredibly
13 intelligent, but he's still just a dog. So even
14 if it would have been justified for Mr. Hale to be
15 bit by the dog, sometimes other things could
16 happen where someone who didn't have any reason to
17 be bit could be bit.

18 So that would be one of the reasons I
19 wouldn't use the dog in this instance. It's just
20 the confines, not knowing who else was in the
21 small RV.

22 Q. Okay. Now, when y'all got to Mazalea RV
23 Park, which lot did you go to?

24 A. We initially went to the wrong lot. We
25 initially went to I believe it was Lot 29. And my

1 understanding of what happened is that the person
2 who called about Mr. Hale lived at 29, and whoever
3 the call taker at dispatch was entered that number
4 as the lot where Hale was. But when we looked at
5 the Record Management System, it showed his
6 address as Lot 26; so we knew there was an error
7 somewhere. So that's where we initially went, was
8 Lot 29.

9 Q. Did you talk to the person who lived at
10 Lot 29?

11 A. I did not.

12 Q. Okay. How did y'all realize that that
13 was the incorrect lot?

14 A. I ran the tag that was in the little
15 driveway area, and it came back to the person who
16 was listed on the screen as the reporting party.

17 Q. That's the gentleman, I guess, who
18 describes himself as a bounty hunter?

19 A. Yeah.

20 Q. How far away was Lot 26 from Lot 29?

21 A. I don't think I can approximate it for
22 you. That trailer park is laid out strangely. So
23 this lot was on, like, the main road, and then
24 Mr. Hale's lot was on another crossroad that
25 connected. Two north-south roads were connected

1 small trailer park asking about him, I was fairly
2 certain that information had gotten to him.

3 So when we got to Lot 26, McKeithen was
4 first, and then I was second, and Darren was
5 behind us. And we started to execute the plan
6 that we had formulated, which was that McKeithen
7 went around, I guess, the driver's side, would be
8 a better description, and Darren and I began to
9 approach the door.

10 Q. Okay. What happened as you started to
11 approach the door?

12 A. This area is pretty dark at night. So
13 McKeithen was in front of me and off to the right
14 a little bit, and I could see the windshield of
15 the RV. And there was a screen that was pulled
16 down over the windshield, but the lights were on
17 inside the RV which allowed me to see into the RV.
18 And I could see Mr. Hale sitting by a window on
19 the left side.

20 So McKeithen was already -- by the time
21 I realized this was fairly close to rounding the
22 side. And, of course, like I said, it was pretty
23 dark, so he took his -- he had his flashlight in
24 his hand, and he did what was called painting the
25 area with light. So he just kind of turns his

1 that investigators had been in this small RV park
2 asking about him for days, I made the inference, I
3 guess is the word I'm looking for, that he was
4 probably aware that he had a warrant because of
5 how small the area was and how he -- in my
6 experience as an investigator, once you start
7 asking about people that you're looking for, they
8 become aware of it very quickly.

9 So when he looked out the window, I'm
10 not saying that the sight of the flashlight made
11 him think the police were there. I said, my
12 thought process was that he was probably aware he
13 had a warrant and was probably a little more alert
14 to people being around the trailer.

15 Q. Okay. But you never confirmed with
16 anyone that told you that Doug knew he had a
17 warrant?

18 A. I never spoke to anyone who said that
19 they knew that Doug knew he had a warrant.

20 Q. Okay. So this was just your assumption
21 that he knew that there was a warrant out for him?

22 MR. GUNN: Object to the form.

23 A. Again, like we said earlier, there's
24 decisions that are made, and a lot of those
25 decisions are based on training and experience.

1 to recall. Not very far.

2 Q. Okay. Which way did the door open? Did
3 it swing in to, basically, your left or in to your
4 right when facing the RV?

5 A. I don't remember if it swung in or out.

6 Q. What happened when you opened the door?

7 A. We began to give Mr. Hale the commands
8 to come out of the RV.

9 Q. What did you say?

10 A. I said "police department." I said
11 "come out." I said "keep your hands out of your
12 pockets." I think I said "keep your hands out of
13 your pockets" several times. I said "come out"
14 several times. That's pretty much what I recall
15 saying.

16 Q. What did Sergeant Lea say?

17 A. The only thing I really remember Darren
18 saying was initially he said that he had lethal
19 cover, and then later he said -- he told Mr. Hale
20 that he would tase him if he didn't comply. Not
21 in those exact words, but that's the gist of what
22 he was saying.

23 Q. When did you draw your firearm?

24 A. I had stepped off the porch -- to the
25 best of my recollection, I had stepped off the

1 he says, I'm coming, I'm coming, I'm coming, I'm
2 just going to get my cigarettes.

3 And he leaned way over where I really
4 couldn't see what he was doing. I could kind of
5 see the bottom of his pants and his elbows moving
6 a little bit. And as he stood back up -- you
7 know, as he stood up, this hand came into view,
8 and it was clear, and this hand came into view,
9 and it was clear.

10 And I think that's about the time when I
11 said, that can get you shot. And I told him again
12 to come out of the trailer. I don't think I said
13 "trailer." I told him to come out. And he again
14 said, okay, okay, okay, I'm coming, I'm coming,
15 I'm coming; but he didn't.

16 And he turned around completely away
17 from us and started messing around with his
18 waistband, turned back around. And what I saw was
19 his hands up about shoulder height. I thought he
20 was facing directly at me, but in reality, he
21 wasn't. His hands were up about shoulder height,
22 and then he just all of a sudden slammed this hand
23 down into his pocket.

24 Q. Okay. You said he reached into his left
25 pocket to get a pack of cigarettes, or came out

1 with a pack of cigarettes. Which hand did he
2 reach into his left pocket with?

3 A. If you were me and looking at Hale, this
4 hand, which is my left hand, went down in the
5 pocket and then came back out with a pack of
6 cigarettes.

7 Q. Did you shoot him then?

8 A. I did not.

9 Q. Did Sergeant Lea shoot him?

10 A. He did not.

11 Q. Did Sergeant Lea tase him?

12 A. He did not.

13 Q. When you say, he jammed his hand -- his
14 right hand down into his pocket -- where were his
15 hands positioned, again, as far as on his body or
16 in line with parts of his body before he --

17 A. They appeared to me to be about shoulder
18 height.

19 Q. Okay. And so you describe it as he
20 quickly jammed his right hand into his right
21 pocket?

22 A. Yeah. It reminded me of -- I'm trying
23 to think of the term -- quick draw. Like, if you
24 were watching an Old West movie and people were
25 practicing their quick draw, almost like Barney

1 Fife on the Andy Griffith Show when he was
2 standing there and practicing. That's what it
3 reminded me of.

4 Q. Did you shoot first, or did Sergeant Lea
5 discharge his taser first?

6 A. I am not 100 percent certain. I did not
7 hear my gunshot. I heard the taser.

8 Q. Okay. Had you been drinking alcohol on
9 April 1st, 2015, before encountering Doug?

10 A. No.

11 Q. Were you taking any types of medication?

12 A. No.

13 Q. Were you depressed about anything?

14 A. No.

15 Q. Were you experiencing anxiety about
16 anything?

17 A. No.

18 Q. Were you under a doctor's care for
19 anything?

20 A. No.

21 Q. Were you participating in any type of
22 counseling or therapy?

23 A. No.

24 Q. Now, from MBI, Mississippi Bureau of
25 Investigation, who interviewed you after the

1 pocket -- went to his right pocket with his right
2 hand?

3 A. I don't know if he had anything in his
4 left hand or not.

5 Q. Did he have a cigarette in his mouth?

6 A. I don't remember.

7 Q. How did he put down his pack of
8 cigarettes?

9 A. He kind of held them off to the side,
10 like stiff armed, and dropped it.

11 Q. And dropped them that way?

12 A. Yeah.

13 Q. Doug didn't physically attack you, did
14 he?

15 A. He did not physically attack me, no.

16 Q. He didn't physically attack Sergeant
17 Lea; is that right?

18 A. That's correct.

19 Q. Now, when Sergeant Lea discharged his
20 taser, did he give any type of warning to you that
21 he was going to fire that taser or discharge that
22 taser?

23 A. He did not.

24 Q. Have you been through taser training?

25 A. I have.

1 Q. Do they teach you during that taser
2 training about certain things, warnings to give
3 for your fellow officers when you discharge your
4 taser?

5 A. There is training on what you're
6 supposed to do when you tase somebody, yes.

7 Q. And what is that warning that you're
8 supposed to give?

9 A. I don't remember the exact wording or
10 the entire phrase, but you're supposed to
11 announce, taser, taser, taser; and then in our
12 policy there is the "unless there are extenuating
13 circumstances," something to that effect. Again,
14 I can't remember the exact phrasing, but that
15 follows that.

16 Q. And what's that warning for?

17 A. That warning is to let other officers
18 know that the taser is being deployed.

19 Q. And why would that be prudent to let the
20 other officers know?

21 A. For a couple of reasons. One, you can
22 prepare your -- ideally what would happen is the
23 taser would be used. The person would feel the
24 full effects of the taser and allow the backup or
25 additional officers to make an arrest while that

1 person was under the influence of the taser. And
2 it's also to prevent accidental discharge.

3 Q. Now, I think I've seen in some of the
4 reports about you mentioning that you were waiting
5 on Sergeant Lea to tase Doug for being
6 noncompliant. Is that accurate?

7 A. Yes.

8 Q. Do you remember who you made those
9 statements to, who you told that to?

10 A. I believe I told that to Investigator
11 Shoemaker, which is our internal affairs
12 investigator, and Investigator -- or I guess he's
13 an agent, Smith.

14 Q. Okay. And is that the policy and
15 custom, to tase someone who's being noncompliant?

16 A. Again, like we talked about before,
17 sometimes there's a tactically good reason for
18 tasing somebody. I didn't want to go in his
19 trailer, and there's a lot of reasons for that.
20 Some of them are things I learned at a basic SWAT
21 school. Some of them are things I learned from
22 working with an assistant of the U.S. Marshals
23 Service.

24 So what I learned in the basic SWAT
25 school is these type of structures are very

1 differently, there could have been a different
2 outcome; but we're talking about April 1st of
3 2015, and we're sitting here in October of 2016.
4 You know, I did the best I could with what I had.

5 BY MR. SMITH:

6 Q. Did Doug ever point a weapon at you or
7 pull a weapon on you?

8 A. No.

9 Q. What's your date of birth?

10 A. 7/17/1975.

11 Q. What's your approximate height?

12 A. About six foot.

13 Q. And what's your approximate weight?

14 A. About 220. It fluctuates.

15 Q. Do you know how big Doug was?

16 A. No.

17 MR. ROS: What was that?

18 MR. GUNN: How big Doug was. Why don't
19 you restate your question?

20 BY MR. SMITH:

21 Q. Do you know how tall Doug was?

22 A. No.

23 Q. Do you know how much he weighed?

24 A. No.

25 Q. Where did you go to high school?

1 A. Gulfport High School.

2 Q. Did you graduate from high school?

3 A. I did.

4 Q. What year?

5 A. 1993.

6 Q. What kind of post high school education
7 do you have, if any?

8 A. I went to the University of Southern
9 Mississippi School of Music, but I did not finish.

10 Q. How many semesters did you finish or
11 complete?

12 A. I think I stayed for four semesters. I
13 probably got two semesters.

14 Q. What kind of training did you go
15 through, just generally, before you were sworn in
16 as a law enforcement officer?

17 A. Before I was sworn in as a law
18 enforcement officer, what kind of law enforcement
19 training?

20 Q. Yes.

21 A. I had no law enforcement training.

22 Q. Before you were put on duty, did you go
23 to the academy? Did you go to any kind of
24 training courses, anything like that?

25 A. Yes. Before I was put on the road as a

1 had a warrant for him, did you?

2 A. I don't remember saying that we had a
3 warrant for him.

4 Q. Do you remember him asking what y'all
5 wanted him for?

6 A. I remember him saying that, yes.

7 Q. Okay. Did you tell him?

8 A. I don't remember telling him, no.

9 MR. SMITH: I think that's it. We're
10 good to go.

11 MR. GUNN: No questions at this time.

12 MR. ROS: No questions from the City.

13 MR. GILL: No questions. We reserve
14 reading and signing.

15 - - -

16 (Exhibit 7 was marked.)

17 - - -

18 (Deposition concluded at 3:36 p.m.)

19

20

21

22

23

24

25